

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

APR 7 1999

PATRICK FISHER
Clerk

JIMMY L. SMITH,

Petitioner-Appellant,

v.

GARY GIBSON; THE ATTORNEY
GENERAL OF THE STATE OF
OKLAHOMA,

Respondents-Appellees.

Nos. 98-7147
& 98-7170

(D.C. No. 96-CV-365-S)
(E.D. Okla.)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge, **BALDOCK**, and **HENRY**, Circuit Judges.**

A jury convicted Petitioner Jimmy L. Smith in Oklahoma state court of robbery with a firearm and assault with a dangerous weapon. Petitioner unsuccessfully appealed his conviction and thereafter twice unsuccessfully sought state post-conviction relief.

Petitioner next filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 in the

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1(A)(2). The case is therefore ordered submitted without oral argument.

federal district court raising three claims: (1) he received ineffective assistance of counsel; (2) the prosecutor submitted unduly prejudicial evidence to the jury; and (3) the state trial court improperly denied his motion for trial transcripts at public expense for the purpose of preparing his second application for state post-conviction relief. The magistrate judge recommended that the petition be denied and the district court adopted that recommendation. The district court subsequently denied Petitioner's application for a certificate of appealability. See 28 U.S.C. § 2253(c). His renewed application is before us.¹

A defendant may appeal the denial of a habeas corpus petition only if a “circuit justice or judge” issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability “may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.” Id. 2253(c)(2); United States v. Simmonds, 111 F.3d 737, 746 (10th Cir. 1997).

We have thoroughly reviewed Defendant's application for a certificate of appealability, his brief, the district court's orders, and the entire record before us. We conclude that Petitioner's claims are meritless substantially for the reasons set forth in the

¹ As a preliminary matter, also before us are three motions: (1) Petitioner's “Motion Requesting to Submit an Enlargement of Additional Pages Length Added to Appellant's Principal Briefs”; (2) Petitioner's “Motion for Additional Record Items and Content of Appellant's Appendix”; and (3) Petitioner's “Petition-In-Error.” We have carefully reviewed each of the motions. Because Petitioner's requests would not assist in the disposition of these appeals, we deny them.

magistrate judge's Findings and Recommendation and the district judge's order adopting the same. Because Petitioner has not made a substantial showing of the denial of a constitutional right, we deny his request for a certificate of appealability and dismiss the appeals.

APPLICATION DENIED; APPEALS DISMISSED.

Entered for the Court,

Bobby R. Baldock
Circuit Judge